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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/814,120	04/01/2004	Eiju Komuro	119346	8012

25944 7590 01/30/2006

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EXAMINER
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DOUGHERTY, THOMAS M

ART UNIT	PAPER NUMBER
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2834

DATE MAILED: 01/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/814,120

Applicant(s)

KOMURO ET AL.

Examiner

Thomas M. Dougherty

Art Unit

2834

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 29 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) 3-6 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 4/1/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

***Response to Arguments***

Applicant's arguments filed 12/29/05 have been fully considered but they are not persuasive for the reasons cited in the election/restriction requirement.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2 are rejected under 35 U.S.C. 102(b) as being anticipated by Yamada et al. (US 2002/0190814). Yamada et al. show (fig. 23) a thin-film bulk acoustic oscillator comprising: a piezoelectric thin film (16) that exhibits a piezoelectric property; a first electrode (15) and a second electrode (17) that are disposed on both surfaces of the piezoelectric thin film (16) and apply an excitation voltage to the piezoelectric thin film (16) and a base (112); wherein: the first electrode (15), the piezoelectric thin film (106) and the second electrode (17) are stacked in this order on the base (112); and a surface of the piezoelectric thin film (16) close to the second electrode (17) has a root mean square roughness of 2 nanometers or smaller. See col. 13, lines 51-60 in which the thickness of the AlN or Al<sub>2</sub>O<sub>3</sub> layer is 0.1 μm to 2 μm and the RMS variation “with respect to the upper surface of the piezoelectric layer 62, the RMS variation of the height is preferably equal to 5% or less of the thickness (average value) of the piezoelectric layer.” Note that 5% or less of 0.1 mm is less than 5 nm, ergo within the applicants' claimed range.

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As noted, the piezoelectric thin film (16) is made of zinc oxide or aluminum nitride.

**Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The remaining prior art cited reads on some aspects of the applicants' claimed invention.

Direct inquiry to Examiner Dougherty at (571) 272-2022.

*tmd*  
tmd

January 26, 2006

*Thomas M. Dougherty*  
**TOM DOUGHERTY**  
**PRIMARY EXAMINER**